



003305

Contract # 059125

## STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following agency of the State of Utah:  
Department: UTAH DEPT OF TRANSPORTATION Agency Code: 810 Division: UDOT-CENTRAL SHOPS, referred to as  
(STATE), and the following CONTRACTOR:

A G Body, Inc.

Name

PO Box 27755

Address

Salt Lake City

Utah

84104

City

State

Zip

## LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor  
☐ Non-Profit Corporation  
☒ For-Profit Corporation  
☐ Partnership  
☐ Government Agency

Contact Person John P Leroy Phone #801-975-0400 Email jpl@agbody.com  
Federal Tax ID# 87-0305225 Vendor #10965B Commodity Code #75510000000

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:  
600 Gallon, Trailer Mounted Oil Distributors as per specifications
3. PROCUREMENT: This contract is entered into as a result of the procurement process on RX# 810 56300000016, FY2005,  
Bid#GL5011.
4. CONTRACT PERIOD: Effective date: 11/04/04 Termination date: 11/03/06 unless terminated early or extended in accordance with the  
terms and conditions of this contract. Renewal options (if any): 3 (1) one-year renewals
5. CONTRACT COSTS: Requirements Contract, \$35,100.00 per unit.
6. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions  
ATTACHMENT B: Specifications
- Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
- All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
  - Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid #GL5011 dated 10/26/04.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

## CONTRACTOR

## STATE

[Signature] 12/17/04  
Contractor's Signature Date

[Signature] DEC 9 2004  
Agency's Signature Date

John P. Leroy Secretary  
Type or Print Name and Title

[Signature] JAN 04 2005  
Director, Division of Purchasing Date  
[Signature] JAN - 5 2005  
DIRECTOR RECEIVED AND  
PROCESSED BY  
DIVISION OF FINANCE  
Director, Division of Finance

<u>Paul Rottmann</u>	<u>801-965-4078</u>	<u>801-965-4073</u>	<u>prottmann@utah.gov</u>
Agency Contact Person	Telephone Number	Fax Number	Email

(Revision 09/30/2003)

APR 25 2005

ENT'D FEB 22 2005

## ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable

for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. and Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract:  
1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

Specification: 600 Gallon Oil Distributor

UTAH DEPARTMENT OF TRANSPORTATION  
Equipment Operations  
Steve McCarthy - Equipment Operations Manager

UDOT PURCHASING AGENT: PAUL ROTTMANN

PREPARED BY: JEFF CASPER  
Revised: October 28, 2002

**600 GALLON OIL DISTRIBUTOR, TRAILER MOUNTED;  
AGENCY, REQUIREMENTS CONTRACT FOR 2 YEARS WITH 3 ONE-YEAR RENEWAL OPTIONS.**

**PART I: GENERAL CLAUSES AND CONDITIONS**

1. The equipment furnished under this specification shall be the latest improved model in current production, as offered to commercial trade, and shall be of quality workmanship and material. The supplier represents that all equipment offered under this specification shall be new. DISCONTINUED MODELS ARE NOT ACCEPTABLE.
2. The units shall be completely assembled and adjusted. All equipment, including standard and supplemental equipment, shall be installed, and the units shall be serviced and ready for continuous operation.
3. All parts not specifically mentioned, but are necessary for the units to be complete and ready for operation, or which are normally furnished as standard equipment, shall be furnished by the supplier. All parts shall conform in strength, quality and workmanship to the accepted standards of the industry.
4. The units provided shall meet or exceed all Federal and State of Utah safety, health, lighting and noise regulations and standards in effect, and which are applicable to equipment furnished, at the time of acceptance.
5. It is the intent of STATE to purchase goods, equipment and services having the least adverse environmental impact, within the constraints of statutory purchasing requirements, departmental need, availability, and sound economical considerations. Suggested changes and environmental enhancements for possible inclusion in future revisions of this specification are encouraged.
6. STATE encourages all manufacturers to comply, voluntarily, with the Society of Automotive Engineers (SAE) recommended practices.
7. Measurements are given in the English system.
8. Failure to provide and comply with Part I of bidder submitted specifications will result in bid(s) being declared non-responsive.

**PART II, GENERAL SPECIFICATIONS**

1. SCOPE:  
This specification describes a 600 gallon oil distributor. These devices shall be complete, assembled, mounted, serviced, tested and certified in accordance with these specifications, and shall meet or exceed all the following requirements.

**PART III, DETAILED SPECIFICATIONS, SWEEPER**

1. TRAILER MISCELLANEOUS
  - 1.1 Tires, wheel, axles and suspension shall be rated for 10,000 pounds minimum at 60 MPH.
  - 1.2 Drawbar shall have 2 ½ inch pintle eye with adjustable height from 19 to 25 inches above ground. Top and

## Specification: 600 Gallon Oil Distributor

bottom of pintle and drawbar shall be clear of frame and mounted accessories.

1.3 To have a retractable screw jack on drawbar.

1.4 Shall have 14 gauge fenders.

1.5 Shall have operators step with open grating and hand holds for tank inspection.

1.6 Shall have electric brakes with a break-away feature and safety chains with hooks.

1.7 Shall be constructed of structural channel frame, tandem axles on spring suspension (Or Approved Equal)

1.8 Shall have a 5lbs fire extinguisher.

1.9 Shall include a steel tool box (6 inch x 10 inch x 30 inch) with hasp for padlock.

### 2. LIGHTS

2.1 Shall have all required stop, turn and running lights and reflectors.

2.2 Shall have a Pollak 11-702, 7 way light connector plug with cable guard.

**Note:** A drawing of correct wiring will be sent upon request.

### 3. TANK

3.1 600 gallon capacity tank to have 1 ½ inch fiberglass insulation minimum with aluminum jacket 0.40 inch minimum.

3.2 Shall have a manhole that meets HM-198 A/HM 183 DOT hot asphalt requirements.

3.3 Manhole shall be 16 inch minimum in diameter with a spill collar and rollover protection.

3.4 Shall include a loading hose, 12 foot x 3 inches flexible steel including male fittings on each end.

3.5 Unit shall include 3 inch cam lock fittings.

### 4. CIRCULATING SYSTEM

The circulating system shall include a 20 gallon flushing oil tank with line to the asphalt pump.

### 5. ENGINE

5.1 Shall have a diesel engine 22 HP minimum, electric starter, alternator and battery.

5.2 Shall have a hydraulic drive for asphalt pump.

5.3 Engine exhaust shall discharge below frame.

### 6. PUMP

Shall be positive displacement type rated at 150 gpm, minimum.

## Specification: 600 Gallon Oil Distributor

### 7. HEATING

- 7.1 Burners shall be operational without power from towing vehicle.
- 7.2 Shall have diesel fueled heating system complete with temperature control and flame out protection.

### 8. SPRAY

- 8.1 Shall have a 10 foot, full circulating, spray bar with non-bar clogging nozzles on 4 inch centers. Shall include a break-away feature.
- 8.2 Shall have hand spray attachment with 15 foot minimum of  $\frac{3}{4}$  inch rubber hose, wand and cold handle.
- 8.3 Bar set at optimum height for most uniform spray coverage.

### 9. PIPING

- 9.1 Shall be 2 inch minimum.
- 9.2 Valves shall provide the following functions:
  - 9.2.1 Fill tank from storage
  - 9.2.2 Circulate material in tank.
  - 9.2.3 Spray from tank through spray bar on hand spray attachment.
  - 9.2.4 Transfer without pumping through tank.
  - 9.2.5 Draw material from tank by gravity.
  - 9.2.6 Drain pump and lines without draining tank.
  - 9.2.7 Shall have reverse suction.

### 10. REMOTE CONTROL

- 10.1.1 Shall include a remote control system for the spray bar with 20 feet of cable or hose if vacuum operated.
- 10.2 Shall have radar ground speed indicator with readout in the cab control panel.

### 11. STRAINERS

Shall have strainers in pump suction line and in manhole.

### 12. THERMOMETER

- 12.1 Shall have pencil type thermometer calibrated from 50 degrees to 400 degrees Fahrenheit minimum.
- 12.2 Shall measure in-tank material temperature.

### 13. PAINT

- 13.1 Shall be painted with one coat of primer and one coat of black enamel.
- 13.2 Advertising shall be omitted.

## Specification: 600 Gallon Oil Distributor

### 14. IDENTIFICATION

14.1 The unit shall have a metal tag permanently attached to the right side of the drawbar with the following information:

Manufacturer's name  
Year of manufacture  
Model number  
Serial number

14.2 The unit shall have the U.D.O.T. 7 digit unit number in 2 inch high numbers on the right side of the drawbar. The unit number shall be applied by welding directly to metal or be welding on a steel plate with the number. Unit number will be specified on purchase order when issued.

### PARTS AND SERVICE

Bidder shall list source of parts and service of purposed equipment. Service center shall be located in the Salt Lake City area, consideration will not be given to bidders unable to satisfy the Utah Department of Transportation or the Division of Purchasing as to the adequacy of their service facilities and the availability of replacement parts.

### PART IV: DELIVERY, DOCUMENTATION, ACCEPTANCE AND PAYMENT

#### 1. DELIVERY REQUIREMENTS

1.1 Delivery shall be within 90 days after receipt of order. At State's option, an extension may be granted, whichever is in State's best interest. Unless a delivery extension is granted for acceptable reasons due to circumstances beyond the vendor's control, liquidated damages of \$20.00 will be deducted from the invoice for every working day after the expiration of the number of days shown on the purchase order until the units are delivered. This provision is not intended as a penalty but as liquidated damages.

1.2 Delivery shall be at no additional charge for locations within a fifty (50) mile radius of the State Capital building.

#### 2. TRAINING

**INSTRUCTION ON SAFETY, OPERATION AND MAINTENANCE:** The vendor shall provide the services of a competent, factory-trained, technician thoroughly trained in the use and operation of the units offered to STATE.

2.1 Vendor shall provide instruction on safety, operation and preventive maintenance of the units, after the units have been delivered and is ready for operation but prior to payment. The instruction shall include a full demonstration of all units= functions on the unit(s) delivered. Instruction shall identify potentially hazardous situations when working.

2.2 **LESSON PLAN:** The supplier shall furnish a copy of the units manufacturer=s approved lesson plan for the instructional training required, within 30 days after award of the purchase order. The lesson plan may be taken from the operator=s manual, provided all necessary information is included.

#### 3 DOCUMENTATION

3.1 Delivery must include Supplier's Invoice, a Copy of Warranty(s) and an Operator=s Manual for each unit.

3.2 Delivery must also include three (3) complete sets of parts lists, and three (3) sets of shop (repair) manuals at no additional charge.

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4. ACCEPTANCE

- 4.1 All equipment ordered with this request will be subject to acceptance inspection and performance testing upon receipt.
- 4.2 Acceptance inspection and performance testing will not take more than five working days, weather permitting.
- 4.3 The vendor will be notified within this time frame of any units that do not comply with the purchase order specifications.
- 4.4 If any units are canceled for non-acceptance, the needed equipment may be purchased elsewhere and the vendor may be charged full increase, if any, in cost and handling.

5. PAYMENT

Invoices will not be approved for payment until all of the required spare parts, filters, documentation and manuals have been received and the equipment has been accepted.